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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 54

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER

v.

GIUSEPPE ERRICO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The main and concurring opinions in the court of appeals (R. 16-26)[1] are reported at 349 F. 2d 541. The opinions of the special inquiry officer (R. 3-9) and of the Board of Immigration Appeals (R. 10-12) are not reported.

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[1] In addition to the printed record in this Court ("R."), we have lodged the certified administrative record with the Clerk of the Court.

JURISDICTION

The judgment of the court of appeals (R. 26) was entered on July 9, 1965, and a petition for rehearing was denied on August 14, 1965 (R. 27). On October 31, 1965, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including January 11, 1966. The petition was filed on that day and was granted on March 21, 1966. 383 U.S. 941. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

An alien who would be deportable because he secured entry through fraud or misrepresentation is excused from deportation on that account by Section 241(f) of the Immigration and Nationality Act if he has close relatives in the United States and was "otherwise admissible at the time of entry". Respondent gained entry as a preference immigrant by knowingly misrepresenting his eligibility for preferential quota status. He has the necessary familial ties in the United States. The question is whether he is entitled to the waiver of deportation provided by Section 241(f) even though, at the time of his entry, he could not have been lawfully admitted in accordance with his true status as a non-preference immigrant because the quota of his country then was substantially oversubscribed.

STATUTES INVOLVED

At the time of respondent's entry and of the final deportation order against him, Section 211(a) of the

Immigration and Nationality Act, 66 Stat. 181, as amended, 8 U.S.C. 1181(a), provided, in part,

> No immigrant shall be admitted into the United States unless at the time of application for admission he * * * (4) is of the proper status under the quota specified in the immigrant visa * * *.

For ready reference, Section 211 is set forth in its entirety in the Appendix, both in its original form and in its present form, as amended effective December 1, 1965.

Section 212(a) of the Immigration and Nationality Act, 66 Stat. 182, as amended, 8 U.S.C. 1182(a), provides, in part:

> (a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States.
>
> * * * *
>
> (19) Any alien who seeks to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact.

Section 241(a) of the Immigration and Nationality Act, 66 Stat. 204, as amended, 8 U.S.C. 1251(a), provides, in part:

> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> (1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry.

Section 241(f) of the Immigration and Nationality Act, 71 Stat. 640, as amended, 8 U.S.C. 1251(f), provides:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

The predecessor of Section 241(f), Section 7 of the Act of September 11, 1957, P.L. 85-316, 71 Stat. 639, is set forth in the Appendix.

STATEMENT

Respondent is a native and citizen of Italy, now 32 years of age. In order to procure entry into the United States he falsely represented that he was a skilled mechanic, with specialized experience in repairing foreign cars. On the basis of this representation, supported by false affidavits of alleged employers, he was granted first preference status under the Italian quota, then awarded to certain immigrants with "high education, technical training, specialized experience, or exceptional ability" whose skills were needed in the United States.[2] He was admitted to the

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[2] First preference status at the time of respondent's entry was accorded under Section 203(a)(1) of the Immigration and Nationality Act, 66 Stat. 178. Substantial revisions in the quota system and in the preference categories were in-

United States on October 17, 1959. He was accompanied by his wife, also a native and national of Italy, whom he had married shortly before embarking for the United States, and who was also admitted as a first preference immigrant under the Italian quota, with a derivative status depending on the first preference status of her husband.[3] A child was born to them in this country on August 3, 1960, and acquired United States citizenship at birth (R. 3-6).

Deportation proceedings were commenced against respondent in September, 1963, charging that he had been excludable at the time of entry because he had not entered under the proper quota status (R. 1-2). At the hearing before a special inquiry officer (at which he was represented by counsel), respondent did not seriously dispute the falsification in securing entry into the United States. However, he contended that, because he had an American-citizen child and

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augurated by the Act of October 3, 1965, P. L. 89-236, 79 Stat. 911. Effective December 1, 1965, the former preferences were abolished and new preference categories were established for persons entering thereafter. A person with the qualifications asserted by respondent could now seek a sixth preference status. See § 203(a)(6), Immigration and Nationality Act, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(6), as amended by § 3, Act of Oct. 3, 1965, P. L. 89-236, 79 Stat. 912.

[3] Derivative and equivalent quota preference was given to the spouse of a first preference immigrant by Section 203(a)(1) of the Immigration and Nationality Act, 66 Stat. 178, as amended by Section 3 of the Act of September 11, 1957, 71 Stat. 639, 8 U.S.C. 1153. Similar derivative status for the spouse and child of any preference immigrant is now conferred by Section 203(a)(9) of the Immigration and Nationality Act, as amended, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(9).

parents who were lawful residents of the United States, his deportation was barred by Section 241(f) of the Immigration and Nationality Act, as amended. The special inquiry officer ruled that respondent was deportable as an excludable alien at the time of entry because of his failure to comply with the quota requirements and that relief under Section 241(f) was not available since that provision forgave deportability for misrepresentation only if the alien was "otherwise admissible" when he entered—not respondent's situation. The Board of Immigration Appeals affirmed the deportation order, holding that Section 241(f) was inapplicable to respondent because he was not entitled to the preferred quota status under which he entered the United States and was ineligible for a waiver of that ground of inadmissibility under Section 211(c).[4]

Respondent then brought review proceedings in the United States Court of Appeals for the Ninth Circuit (R. 13). The court agreed that petitioner had improperly obtained preferred quota status and that this defect could not be waived. However, the court ruled that respondent's inadmissibility stemmed from a mis-

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[4] At the time, Section 211(c) (reproduced in the Appendix) authorized the Attorney General to admit aliens who, like respondent, were excludable for visa defects but only if the defect was unknown to the applicant and not reasonably discoverable prior to his embarking for the United States. The inquiry officer (R. 7), the Board (R. 11-12), and the court of appeals (R. 17-18) all concurred in the finding that respondent was ineligible for this relief because he knew he was not entitled to the preference status recited in his visa before he left Italy.

representation and that his resulting deportability had been amnestied by Section 241(f) of the Immigration and Nationality Act. Accordingly, it vacated the deportation order.

SUMMARY OF ARGUMENT

Respondent is admittedly deportable for having entered the United States through misrepresentation. Since he has an American-born child and resident alien parents Section 241(f) of the Immigration and Nationality Act waives his deportability on account of his false statement if he was "otherwise admissible at the time of entry". Respondent, however, did not satisfy this condition because he could not meet the quota restrictions which were then oversubscribed for many years into the future.

I

1. The apparent premise of the court below is that Section 241(f) excuses not only a material misrepresentation, but also an underlying bar to admissibility which the false statement concealed; this is at odds with the language of the provision, which only waives deportation "on the ground" that entry had been procured through misrepresentations, and only in the case of an alien who was "otherwise admissible at the time of entry."

2. The legislative background of Section 241(f) confirms its limited purpose to grant relief only from the effect of a misrepresentation. The statute was fashioned to deal with severe provisions of earlier refugee legislation, and of the present statute, which

perpetually barred aliens who had made willful misrepresentations in order to enter the United States. When amelioration was provided in 1957 the principal purpose was to alleviate the harsh consequences for refugees. The provisions concerned with close relatives were designed, as the Committee Report indicates, to deal with a relatively minor problem involving "mostly Mexican nationals." The statute was not broadened by the 1961 amendment making it permanent legislation. There is thus no warrant for the expansive reading indulged by the court below.

3. The thesis of the court below—that Section 241 (f) provided "absolute relief" for falsifiers—is inconsistent with the disposition of Congress in comparable situations. A number of statutes allow various remedies to aliens with close family ties or long residence in the United States. But none of these humanitarian measures affords the sweeping waiver suggested below. Each is circumscribed by conditions and requires the exercise of discretion. The fact that relief here is automatic rather than discretionary indicates that the objective was simply to waive a special and technical ground of deportability, generated by the misrepresentation itself, rather than to waive all underlying grounds of deportation.

II

The alternative suggestion that the "otherwise admissible" condition relates only to qualitative standards, rather than quota requirements, finds no support in the language of the statute itself. If Congress had wished to adopt such a limitation it could easily

have recorded its desire in precise language, as it has done on many other occasions. Moreover, the legislative history reveals an unmistakable wish to preserve quota restrictions. This is seen in the language of the 1957 Act itself, in the positive expressions of its legislative sponsors, and in the Committee Reports on the 1961 amendments.

The supposition that "otherwise admissible" is a term of art, limited to qualitative requirements, is unsupportable. There is no consistent usage, and the connotation depends on the context. In most situations, as here, "otherwise admissible" has clearly included both qualitative and quota requirements.

Under the precise formulas of the immigration law only the spouse or the unmarried child of an American citizen, or the parent of an adult citizen, is entitled to exemption from the quota. Respondent can qualify for none of these exemptions. Yet the theory of quota waiver would mean that, although the statute grants no exemption to aliens in respondent's situation who are in the United States legally or seeking to enter lawfully from abroad, it does grant such an exemption if they have entered fraudulently. We cannot believe such an anomalous result was intended by Congress.

Nor do we share the view of the court below that a failure to adopt its construction would make Section 241(f) inoperative. There are a number of situations in which the benefits of the provision can be, and have been, applied. These include misrepresentations by natives of Western Hemisphere countries (not subject to quota limitations), by returning lawful resi-

dents, by aliens whose substantive ground for exclusion can be waived, and by those whose falsehoods relate to matters which, though relevant, do not actually make them inadmissible.

By falsifying, respondent was able to bypass long waiting lists for immigrants from Italy. It is hardly likely that Congress intended to reward such deception by giving him quota preference greater than he could then or now have obtained legitimately.

ARGUMENT

At the time of his entry into the United States in 1959 respondent was excludable under the Immigration and Nationality Act on at least two grounds. First, not being a specialized auto mechanic,[5] he did not have the preferred "status under the quota specified in [his] immigrant visa" § 211(a)(4), 8 U.S.C. 1181(a)(4)).[6] And, second, in claiming a skill he knew he did not possess in order to obtain preferred status when the quota for his country was oversubscribed, he procured a visa and entry into the

[5] See note 2, *supra*.

[6] Section 211 of the Act, 8 U.S.C. 1181, was substantially revised by § 9 of the Act of October 3, 1965, P.L. 89-236, 79 Stat. 917. The statute in its original and its amended form is set forth in the Appendix. The 1965 amendment was part of the comprehensive legislation ending the national origins quota system, effective July 1, 1968. In its present form § 211 does not include the former clause (a)(4). Although this revision in language was not explained in the legislative reports, the apparent reason was that the elimination of national quotas would make such a provision obsolete.

United States "by willfully misrepresenting a material fact" (§ 212(a)(19), 8 U.S.C. 1182(a)(19)).[7] As an alien excludable at the time of entry, respondent was subject to deportation under Section 241(a)(1) of the Act (8 U.S.C. 1251(a)(1)), in the absence of some special statutory dispension. Because he knew before he embarked for the United States that he was not entitled to the preference status recited in his visa, respondent was found ineligible for the discretionary relief authorized by Section 211(c) (8 U.S.C. 1181(c)).[8] However, having an American citizen child and parents who are lawful residents of this country,[9] he could invoke Section 241(f) (8 U.S.C.

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[7] See, also, §§ 212(a)(20), (21) (8 U.S.C. 1182(a)(20), (21)), which, so far as here relevant, declare inadmissible those whose visas are invalid for one reason or another. Although the first of these provisions is discussed in the opinions below (R. 9, 11-12, 24), we do not press these grounds for exclusion in this Court. As applied to respondent, the cited sections largely overlap Section 211(a). In any event, our argument does not depend on additional causes for exclusion.

[8] See note 4, *supra*.

The 1965 amendment of § 211, referred to in note 6, *supra*, and set forth in the Appendix, also eliminated former subsection (c) and there is no comparable waiver provision in the amended statute. Again there was no explanation. However, the elimination of the nationality quotas and of the specific references to improper quota charges apparently persuaded those who drafted this legislation that the waiver provision was no longer necessary.

[9] Respondent's parents and his brothers and sisters came to the United States in 1956, thus preceding him by three years. His son was born here in 1960, some ten months after respondent's entry and three years before the deportation proceedings were initiated.

1251(f)), which waives deportation in the case of aliens with close relatives in the United States who obtained entry by fraud but were "otherwise admissible" at the time. The question is whether respondent was "otherwise admissible" within the meaning of Section 241(f), despite the fact that he was excludable at entry not only an account of his misrepresentation, but also because he was not entitled to the preference quota status reflected in his visa and, as an ordinary quota immigrant, would not have been able to secure an entry visa for many years. Put another way, the issue is whether Section 241(f) excuses only the false statement or, also, the underlying bar to admissibility which the misrepresentation concealed and waives deportation on that account as well.

Disagreeing with the special inquiry officer and the Board of Immigration Appeals, the court of appeals resolved the question in favor of respondent. The exact scope of the ruling below is not clear. But, even read as narrowly as possible, we believe it carries much too far and grossly misconceives the intent of Congress. We turn first to the broader rule which the main opinion seems to announce, leaving for later discussion the somewhat narrower proposition advanced in Judge Duniway's concurrence.

I

Section 241(f), Where Applicable, Only Waives Deportability for Misrepresentation; It Does Not Remove an Additional Bar to Admissibility Which the False Statement has Temporarily Concealed, or Arrest Deportation on that Account.

The main opinion of the court of appeals states the governing rule as follows: "[u]nder its plain terms, [Section 241(f) of the Immigration and Nationality Act] purports to grant *absolute relief* to aliens who have close familial ties in the United States and who have gained entry into the United States through 'fraud or misrepresentation'" (R. 20, emphasis added; see also, R. 22). Literally, this is saying that an alien like respondent who misrepresents his skills and thereby obtains a preference visa is absolutely excused from deportation even though he is also inadmissible for some wholly independent reason unrelated to the false statement—say, narcotic trafficking (see § 212(a)(23), 8 U.S.C. 1182(a)(23)). But that would be so obviously disregarding the condition of Section 241(f) that the waiver is available only to an "*otherwise admissible*" alien that we cannot attribute such a proposition to the court. Perhaps in speaking of "absolute relief," the court only means to characterize the remedy, where applicable, as mandatory, *i.e.*, effective by operation of law, rather than discretionary, *i.e.*, within the dispensing power of the Attorney General. Although the opinion is unclear, the court of appeals presumably construes the provision as excusing both the misrepresentation and the underlying cause of inadmissibility which the misrepresen-

tation sought to conceal, but not every unrelated ground for exclusion. It is on that premise that we discuss the question.

As we understand the main opinion below, it holds that Section 241(f) waives the normal sanction of deportation on account of the fact misrepresented no matter what it is—whether it be trafficking in narcotics, conviction of a felony, or (as here) ineligibility for a preference visa. The apparent rationale is that since Section 241(f) excuses the misrepresentation (in the case of an admitted alien with close relatives in this country), the false statement must be accepted as true for all purposes, barring the Immigration Service from going behind it to notice an additional cause of inadmissibility. Whatever surface plausibility there may be in such a rule, we submit that it distorts the statute, misapprehends its purpose and creates a reward for fraud at odds with the scheme of the immigration law.

A. *The text of Section 241(f)*

The language of the statute itself seems directly opposed to the construction adopted by the court below. Section 241(f) does not purport to waive all causes for deportation, but only deportability "*on the ground* that they were excludable at the time of entry" for having procured documents or entry through fraud (emphasis added). A familiar precept counsels that the specification of one ground excludes others. The purpose of Congress to waive only this cause of deportability is underscored by the reserva-

tion that the waiver is activated only if the alien was "otherwise admissible at the time of entry".

It is difficult to appreciate how this language can be read as permitting waiver of a deportation charge other than one resting "on the ground" that entry had been procured through fraud or misrepresentation. Indeed, it would be possible to read Section 241 (f) as restricted to a charge of entry in violation of Section 212(a)(19) of the statute, 8 U.S.C. 1182(a)(19), which erects an exclusion for misrepresentations in language similar to that used in Section 241 (f). Other deportation charges could emerge from such a misrepresentation, *e.g.*, for charge to the wrong quota, for defective visa, for entry without inspection, or for perjury. But the administrative authorities have read the statute generously, in the light of its manifest purpose, and have ruled that the waiver extinguished any deportation charge resulting from the misrepresentation itself, regardless of the section of the law under which the charge was brought. *Matter of S—*, 7 I. & N. Dec. 715 (1958); *Matter of D'O—*, 8 I. & N. Dec. 215 (1958); *Matter of Y—*, 8 I. & N. Dec. 143 (1959). Thus, here, the special inquiry officer did not hold respondent ineligible for relief under Section 241(f) on the technical ground that the visa misdescribed his status—a cause of exclusion separate from the misrepresentation, although directly attributable to it—but, rather, because, paper irregularities to one side, respondent was not otherwise eligible for entry.

But in the face of the restrictive language of the provision and the declaration that the alien must have been "otherwise admissible", there is no basis for supposing that Congress intended to waive grounds for deportation which do *not* depend on a misrepresentation. Because Section 241(f), in excusing a misrepresentation also forgives incidental procedural flaws in the admission process which are readily correctable by substituting new papers, it does not follow that Congress meant to remove an irremediable substantive bar to entry. To illustrate, suppose that an alien is excludable for criminal record, subversive activity, narcotics traffic, or failure to comply with quota requirements, that he lies concerning his background and thereby succeeds in entering the United States, and that thereafter he has a child in this country. In that situation, we believe Section 241(f) was designed to forgive deportability for the lie and for the resulting irregularities in the papers, but not for the grounds of exclusion which preceded and were independent of the lie. This interpretation of Section 241 (f) and its predecessors has been adopted by every judicial and administrative decision, other than that of the court below. *Langhammer* v. *Hamilton*, 295 F. 2d 642, 648 (C.A. 1) (Communist Party membership); *Bufalino* v. *Holland*, 277 F. 2d 270, 278 (C.A. 3), certiorari denied, 364 U.S. 863 (lack of proper documents and ineligibility for waiver of documents); *Scott* v. *I.N.S.*, 350 F. 2d 279 (C.A. 2), certiorari granted, 383 U.S. 941, No. 91, this Term (evasion of quota requirements); *Matter of D'O—*, 8 I. & N. Dec. 215 (same); *Matter of Slade*, 10 I. & N. Dec.

128 (same); *Matter of S—*, 9 I. & N. Dec. 496, 502 (prior conviction for crime).[10]

In short, to be "otherwise admissible" at the time of entry, the applicant for relief under Section 241 (f) must show that he could have been admitted even if he had not lied. An alien, like respondent, who could not meet quota requirements, cannot make that showing.

B. *The legislative history of Section 241(f)*

An understanding of the narrow scope of Section 241(f) is aided by an examination of its legislative history. The statutory development begins with Section 10 of the Displaced Persons Act of June 25, 1948, 62 Stat. 1009, 1013. Although this legislation initiated a humanitarian program which eventually made possible the entry of 400,000 refugees who were homeless as the result of World War II, it included a number of restrictive provisions. One of these was Section 10, which provided that any person who wilfully made a misrepresentation for the purpose of gaining admission under its terms "shall thereafter not be admissible into the United States." Because such misrepresentations usually concerned the alien's place of origin and were made to avert repatriation

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[10] See, also, *Ntovas* v. *Ahrens*, 276 F. 2d 483 (C.A. 7), certiorari denied, 364 U.S. 826; *Rutledge* v. *Esperdy*, 200 F. Supp. 231 (S.D.N.Y.), affirmed *per curiam*, 297 F. 2d 532 (C.A. 2), which hold that aliens deported for overstaying temporary entry could not claim that their deportation orders should have been predicated on misrepresentations and that, since they had close family ties, this would have entitled them to a waiver of deporability.

to Iron Curtain countries, Section 10 was said to impose "one of the severest penalties provided in any immigration law." See *The D P Story*, The Final Report of the United States Displaced Persons Commission (1952), p. 96. Yet it was re-enacted in the second major law for the reception of post-war refugees. See § 11(a) of the Refugee Relief Act of August 7, 1953, 67 Stat. 400. And it was in the meantime extended to other aliens in a comprehensive revision and recodification of the immigration and nationality laws adopted in 1952. § 212(a)(19), 8 U.S.C. 1182 (a)(19). See S. Rep. 1137, 82d Cong., 2d Sess., p. 10-11.

The idea of lessening the burden of this sanction, at least for refugees, arose in the legislative discussions preceding the enactment of the 1952 Act. Indeed, the House Committee added a proviso to excuse misrepresentations made by refugees in order to escape persecution, if such representations were not otherwise material to admissibility. H. Rep. 1365, 82d Cong., 2d Sess., pp. 50, 134. Although sympathetic to the proposal, the Conference Committee declined to enact the proviso into positive law. It eliminated the proviso, with the following guarded exhortation (H. Rep. 2096, 82d Cong., 2d Sess., p. 128):

> It is also the opinion of the conferees that the sections of the bill which provide for the exclusion of aliens who obtained travel documents by fraud or by willfully misrepresenting a material fact, should not serve to exclude or to deport certain bona fide refugees who in fear of being forcibly repatriated to their former homelands misrepresented their place of birth when apply-

> ing for a visa and such misrepresentation did not have as its basis the desire to evade the quota provisions of the law or an investigation in the place of their former residence. The conferees wish to emphasize that in applying fair humanitarian standards in the administrative adjudication of such cases, every effort is to be made to prevent the evasion of law by fraud and to protect the interest of the United States.[11]

President Truman vetoed the bill, deploring the harshness of its provisions regarding misrepresentations made by "refugees from tyranny". H. Doc. 520, 82d Cong., 2d Sess., p. 6. But the bill became law when the President's veto was overridden by Congress. Act of June 27, 1952, P.L. 414, 82d Cong., 2d Sess., 66 Stat. 163.

Thereafter, the Attorney General found his hands tied by the unqualified language of the statute regarding misrepresentations, believing that the sentiments expressed in the Conference Report did not warrant his waiver of misrepresentations by refugees in disregard of the statutory mandate. See H. Rep. 1199, 85th Cong., 1st Sess., p. 10. Congress finally authorized relief in 1957. The omnibus legislation of that year included many modifications of excessive hardships that had developed in the administration of the 1952 Act. Section 7 of the Act of September 11, 1957 (P.L. 85-316, 71 Stat. 640), which is set forth in full in the Appendix, alleviated for the first time the severity of the statutory provisions prescribing ex-

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[11] The references in the opinion of the court of appeals to "fair humanitarian standards" (R. 20, 21) appear in the above quotation from the Conference Report on the 1952 Act.

clusion and deportation for misrepresentations. Briefly, the statute provided that deportation for past irregular entries because of misrepresentation would be waived in the case of the following classes of aliens "otherwise admissible at the time of entry":

> (1) Aliens with specified close relatives in the United States.
>
> (2) Refugees admitted between 1945 and 1954, who established to the satisfaction of the Attorney General that their misrepresentation regarding nationality, place of birth, identity, or residence was predicated on fear of persecution and "was not committed for the purpose of evading the quota restrictions of the immigration laws."

A third provision of Section 7 provided for discretionary waiver of inadmissibility for misrepresentation on behalf of aliens with the specified close relatives who thereafter applied for entry, "if otherwise admissible".

The limited objectives of Section 7 of the 1957 Act are emphasized in the related Congressional reports. The House Report (H. Rep. 1199, 85th Cong., 1st Sess.) stated that in various sections of the bill, "Waivers of specific causes for exclusion to prevent hardship in certain cases are included" (p. 3), and that the relief provision for refugees was designed "to condone what was generally considered to be a justifiable misrepresentation" (p. 9). With respect to the waiver for close relatives of persons in the United States, the House Committee commented (p. 11):

> In respect to expulsion of aliens who are the spouses, parents, or children of United States citizens or lawfully resident aliens, and who are already in the United States, misrepresentation in obtaining documentation or entry would not be a ground for deportation if the aliens were otherwise admissible at the time of entry under the immigration law. The latter category of aliens includes mostly Mexican nationals, who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States, establish a family in this country, and were subsequently found to reside in the United States illegally.

The Senate Committee merely observed that the proposed legislation "would provide for the correction of a situation" resulting in excessive hardships. S. Rep. 1057, 85th Cong., 1st Sess., p. 5.

Section 7 of the 1957 legislation was incorporated, with some modifications, into the permanent statute in 1961, by omnibus legislation making a number of other amendments. Act of September 26, 1961, P.L. 87-301, 75 Stat. 650, 655, §§ 15-16. The authorization of discretionary waiver of excludability for misrepresentations by close relatives of American citizens was codified as Section 212(h), 8 U.S.C. 1182(i);[12] the waiver of deportability for misrepresentations by close relatives was codified as Section 241(f); and the waiver provision for misrepresentations by refugees

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[12] Section 212(h) was redesignated as Section 212(i) of the Act by Section 15(c) of the Act of October 3, 1965, P.L. 89-236, 79 Stat. 919. The 1965 legislation made no other changes in the above statutory provisions.

was eliminated on the ground that it "[had] served its humanitarian purpose". H. Rep. 1086, 87th Cong., 1st Sess., p. 37. The court of appeals to the contrary notwithstanding,[13] the 1961 revision worked no substantial change relevant to our problem. There is not a word in the legislative materials to suggest a desire for expanded coverage. On the contrary, the House Judiciary Committee, which authored the new provisions, expressly declared that they were intended to "codify existing law". *Ibid.*

We believe the legislative history demonstrates that the waiver of deportability for misrepresentations was a measure with limited objectives. The court below has emphasized the humanitarian purpose of Section 241(f). We fully agree. But this generous impulse hardly warrants disregarding the language and evident purpose of the statute.

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[13] In assessing the legislative history, the court of appeals asserts (R. 21) that Section 7 of the 1957 Act sanctioned waiver of deportability only for those who had made representations relating to nationality, place of birth, identity, or residence and that the 1961 amendment liberalized the statutory authorization by removing the limitations restricting relief. It made a palpable error in reading these statutes. The fact is that the restricted provision of the 1957 Act on which the court below focused applied only to refugees and, as indicated above, was eliminated as obsolete by the 1961 codification. In this respect, the later statute can be regarded as less liberal. But Section 7 of the 1957 Act (reproduced in full in the Appendix) also granted a *non-discretionary* waiver of deportation on account of *any* misrepresentation by aliens with close relatives in the United States who had entered by fraud. This was substantially unchanged by the 1961 provision which became Section 241(f).

C. *Section 241(f) in the overall statutory scheme*

Although other provisions of the Immigration and Naturalization Act have offered escape from deportation to aliens with close family ties in the United States, we are aware of none which has afforded the absolute and unconditional relief suggested by the court of appeals. Indeed, even where the underlying humanitarian appeal was stronger, Congress has imposed restrictions on relief and, with respect to those who qualify, it has authorized the Attorney General to deny a waiver in his discretion. See *Hintopoulos* v. *Shaughnessy*, 353 U.S. 72, 77.

Thus, Section 244 (8 U.S.C. 1254) authorizes suspension (and ultimately waiver) of deportation in the case of an alien with extended residence in the United States whose deportation would result in "extreme" or "exceptional and extremely unusual" hardship to the alien or to his close relatives in the United States. Although the reach of this statute spans all grounds for deportation, its benefits are available only to those who meet prescribed standards of residence, good moral character and hardship (Sec. 244(a)), and are withheld from aliens who entered as crewmen after June 30, 1964, or who entered as exchange visitors, or who are natives of contiguous countries or adjacent islands (Sec. 244(f) (8 U.S.C. (1964 ed., Supp. 1) 1254(f)). Moreover the statute specifies that suspension of deportation can be granted only in the discretion of the Attorney General and that any such grants by the Attorney General must be submitted to Congress for its approval (Section 244(c)).

Another important remedy is that authorized by the "adjustment of status" provision of Section 245

(8 U.S.C. 1255) which enables temporary entrants to achieve permanent-residence status without leaving the United States. In practice, the usual beneficiaries of the provision are aliens who have married American citizens during their temporary sojourn here. But Congress has withheld these benefits from crewmen (Sec. 245 (a)), natives of Western Hemisphere countries (Sec. 245(c)), and exchange visitors (Sec. 212(e), 8 U.S.C. 1182(e)). Moreover, the applicant for such relief must show that he "is eligible to receive an immigrant visa and is admissible to the United States" and an immigrant visa must be immediately available to him (Sec. 245(a)). And the statute stipulates that adjustment of status *may* be allowed by the Attorney General "in his discretion and under such regulations as he may prescribe" (*id.*).

Similarly, Section 249 (8 U.S.C. 1259), which sanctions the award of permanent status to aliens with long residence in the United States, is hedged by conditions. See *Mrvica* v. *Esperdy*, 376 U.S. 560. Among others, applicants who would be inadmissible for specified misconduct are ineligible. And, again, the grant of relief is confided to the discretion of the Attorney General.

Still another dispensation is afforded by Section 212(e) (8 U.S.C. 1182(e)), which permits waiver of a requirement that exchange visitors must reside for two years in a foreign country before they can become permanent residents of the United States. One ground for such waiver is that departure from the United States "would impose exceptional hardship"

on the alien's spouse or child in the United States. Here, also, application must be made to the Attorney General, who "may" grant the waiver if he finds that admission of the alien "[would] be in the public interest." And Congress has indicated that relief under this provision should be awarded sparingly. See Gordon and Rosenfield, *Immigration Law and Procedure* (1965 Rev. with Supplement), Sec. 6.8g.

And finally, aliens excludable for crimes or prostitution may be admitted for permanent residence under Section 212(h) (8 U.S.C. 1182(h)). But, again, the availability of relief is severely circumscribed—limited to cases in which the alien's close relative here would otherwise suffer "extreme hardship"—and the waiver is wholly discretionary with the Attorney General.[14]

These measured grants in analogous situations illuminate the legislative design with respect to Section 241(f). It is unreasonable to suppose that Congress imposed conditions and limitations upon the award of permanent residence in all other cases involving aliens with long residence (§§ 244 and 249) or close family ties in the United States (§§ 244, 212(e) and

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[14] We cannot appreciate why the court below apparently thought this provision inconsistent with a reading of Section 241(f) that does not excuse underlying grounds of excludability (See R. 22). In three respects Section 212(h) is more restricted: (1) it applies only in "hardship" cases; (2) it waives only excludability, not deportation after an illegal entry (see *Jerez* v. *Esperdy*, 281 F. 2d 182 (C.A. 2), certiorari denied, 366 U.S. 905); and, finally, (3) relief is wholly discretionary, not automatic. Moreover, Section 212(h), like Section 241(f), requires that the alien be "otherwise admissible."

212(h)), or aliens who had come here legally and sought to remain (Sec. 245), and at the same time directed the unconditional removal of all restrictions for persons who had entered fraudulently. On the contrary, the very fact that, unlike the other provisions, Section 241(f) prescribes automatic rather than discretionary relief, indicates that it was meant to have a very limited scope, excusing only a special and technical ground of deportability. We conclude that reading Section 241(f) to waive not only the misrepresentation but also the underlying substantive bar to admissibility would do violence to the overall statutory scheme.

II

Section 241(f), Where Applicable, Waives Deportability Only for Aliens Who Are "Otherwise Admissible" in Every Sense; It Does Not Merely Require Compliance With Qualitative Standards

The alternative suggestion is that in restricting benefits under Section 241(f) to aliens who were "otherwise admissible" Congress referred only to admissibility on qualitative grounds, and meant to waive compliance with "quantitative" quota requirements. That was the proposition advanced by the concurring opinion below (R. 25-26) and the main burden of the argument considered and rejected by the Second Circuit in the companion *Scott* case, No. 91, this Term. We believe this construction of the statute is equally unsound.

1. In the first place, such a qualified reading finds no support in the language of the statute itself. In

extending relief from deportation for misrepresentations to aliens who are "otherwise admissible", Section 241(f) does not suggest a waiver of compliance with quota requirements. Entry into the United States is conditioned upon a wide spectrum of qualifications, which can be classified as qualitative, numerical, and documentary, each of which must be satisfied in the absence of an express statutory waiver. When Congress wishes to excuse any prescribed condition for entry, it finds no difficulty in making its meaning plain. Its failure to qualify the requirement that the alien be "otherwise admissible" in Section 241(f) is sufficient indication that eligibility for a visa under the quota remains a necessary condition for relief.

Thus, the War Brides Act, 59 Stat. 659, specifically expressed the desire to eliminate documentary and medical requirements for war brides of American soldiers, in permitting them to enter the United States "if otherwise admissible under the immigration laws". See *Bonham* v. *Bouiss*, 161 F. 2d 678 (C.A. 9). Similarly, Section 212(d)(7) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(7)) subjects immigrants coming to the continental United States from certain insular possessions to all requirements of the immigration laws, except the documentary requirements. Section 211(b), in its original and amended forms (set forth in the Appendix) permits waiver of the documentary requirements for certain "otherwise admissible" aliens. Section 249 (8 U.S.C. 1259) authorizes the grant of permanent residence through registry to an alien who is "not inadmissible under section 212(a) insofar as it relates

to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens". And Section 244 (8 U.S.C. 1254) prescribes different conditions for granting suspension of deportation and voluntary departure to different classes of deportable aliens. One can give numerous added examples of precise Congressional directions to deal differently with designated classes of aliens. *E.g.*, Sections 102, 202(a), 212(b), (c), (d), (g), and (h), and 242(b) and (e), and 252(a), Immigration and Nationality Act, as amended; 8 U.S.C. 1102, 1152(a), 1182(b), (c), (d), (g), and (h), 1252(b) and (e), and 1282(a). If a comparable exception were intended in Section 241(f), it would have been explicitly stated.

2. Moreover, Judge Duniway's interpretation of Section 241(f) overlooks its legislative background. In the Senate debate on the 1957 amendments the Chairman of the sponsoring committee, Senator Eastland, represented that the bill "does not touch the basic provisions of the McCarran-Walter Act" and that it "does not modify the national origins quota * * * system". 103 Cong. Rec. 15487 (Aug. 21, 1957). In the House of Representatives the leading protagonists made similar representations to the effect that the bill sought minor adjustments; it "makes no changes—no changes whatsoever, in the controversial issue of the national origins quota system" (Chairman Celler); it "does not change the national origin quota system" (Representative Chelf). 103 Cong. Rec. 16300, 16305-06 (Aug. 28, 1957). Also, the House Committee Report (H. Rep. 1199, 85th Cong.,

1st Sess., pp. 9-10), from which we have previously quoted, emphasized the primary concern to deal with misstatements by refugees and made the following observations regarding the provisions for misstatements by close relatives (p. 11):

> The latter category of aliens includes mostly Mexican nationals, who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States, establish a family in this country, and were subsequently found to reside in the United States illegally.

The "Mexican nationals" mentioned in this quotation are natives of a Western Hemisphere country, who were not then and are not now subject to quota limitations. See Sec. 101(a)(27), Immigration and Nationality Act, 66 Stat. 169, 8 U.S.C. 1101(a)(27), in its original form and as amended by Section 8, Act of October 3, 1965, P.L. 89-236, 79 Stat. 916.

Finally, the purpose to insist on adherence to applicable quota limitations was articulated in Section 7 of the 1957 Act (set forth in the Appendix), which was the predecessor of Section 241(f). Section 7 provided for discretionary waiver of a misrepresentation by a refugee of his nationality, place of birth, identity or residence, but only if such misrepresentation was made for the purpose of escaping persecution "and was not committed for the purpose of evading the quota restrictions of the immigration laws". It will be recalled that the Conference Committee Report on the 1952 Act (quoted at p. 18, *supra*) likewise declared that there was no wish to penalize refu-

gees, so long as their falsifications did not stem from "the desire to evade the quota provisions of the law".

3. The concurring opinion of Judge Duniway argues that "otherwise admissible" is a term of art which "refers to matters other than * * * quota status" (R. 25). The only support for this thesis is a reference to Section 211(a) in its original form (see the Appendix), which precluded admission of an immigrant unless he satisfied applicable quota and visa requirements and was "otherwise admissible".[15] Since Section 211 dealt with documentary and quota requirements the phrase "otherwise admissible" as there used necessarily connoted qualitative requirements. But this single usage in one context cannot be said to govern every other situation. Indeed, it hardly seems possible to attribute such coloration to like language in other contexts. Thus, Section 212(b), (8 U.S.C. 1182(b)) waives the literacy test for certain immigrants who are "otherwise admissible", and obviously contemplates the retention of all other entry requirements, qualitative, quantitative and documentary. So, also, the discretionary waivers of

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[15] The 1965 amendment to Section 211 (Appendix) revised the statute, eliminating the language in question because of the modification of the quota system. The statute still requires presentation of a "valid" immigrant visa and specifies that no visa presented before June 30, 1968 (when the national origins quota system ends) shall be deemed valid unless the immigrant is charged to his proper quota. The amended statute eliminates the authorization of waiver for innocent errors in quota classifications, formerly provided by Section 211(c). The phrase "otherwise admissible" still appears in Section 211(b) of the amended statute, which deals with waiver of documentary requirements for returning residents.

specified exclusionary grounds for entrant aliens with close relatives in the United States authorized by Section 212(g) (tuberculosis or mental defects), (h) (crime and prostitution), and (i) (misrepresentation) (8 U.S.C. 1182(g), (h) and (i)), apply only to immigrants who are "otherwise admissible", and plainly demand compliance with all other entry requirements, including quota restrictions. Indeed, the misrepresentations referred to in Section 212(i) are the same as those referred to in Section 241(f), and in speaking of aliens "otherwise admissible" Congress hardly could have required quota compliance in one instance and not the other. Judge Duniway's "term of art" thesis is thus untenable.

4. The supposition that Congress intended to waive quota compliance is incongruous when Section 241(f) is viewed as part of the total setting. At the time of the fraudulent entries by respondent in 1959 and by Mrs. Scott, the petitioner in the companion case, in 1958, the immigration quota of 5,666 for Italy and the subquota of 100 for Jamaica (under the British quota)[16] were committed far into the future. For the relevant years, the number of hopeful applicants on the quota waiting list for Italy was 162,612 and for Jamaica it was 21,759. In 1961 the respective figures had risen to 270,950 for Italy and 24,584 for

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[16] In 1962 Jamaica became an independent nation and was assigned a separate quota of 100. See Pres. Proc. 3503, October 23, 1962, 27 F.R. 10399, 77 Stat. 956. Among the amendments made by Secs. 1 and 8 of the Act of October 3, 1965, P.L. 89-236, 79 Stat. 911, 916, was one exempting from numerical restrictions the natives of any independent country of the Western Hemisphere.

Jamaica.[17] Thus, a questing immigrant from those countries would have to take his place at the end of a very long line,[18] and could not be reached for many years.[19] Yet, the suggestion is that by resorting to fraud respondent could bypass the tens of thousands of other immigrants ahead of him on the waiting list. What is more, the theory of quota waiver would reward deception by granting absolute and automatic exemption from quota restrictions to those who had entered by fraud in situations where other aliens with the same close relatives who sought entry or permanent residence status lawfully are entitled to only limited priorities or must apply for discretionary relief.

Indeed, the former preference and the present exemption for the parent of a United States citizen applies only if the child is over the age of twenty-one. Section 203(a)(2), Immigration and Nationality Act,

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[17] Visa Office Bulletins 36 (Nov. 6, 1958), 44 (July 8, 1959), and 74 (Jan. 25, 1961) U.S. Department of State. See, also, chart inserted in Congressional Record by Senator Eastland, 107 Cong. Rec. 19650 (Sept. 15, 1961).

State Department statistics showed a worldwide aggregate of prospective immigrants on quota waiting lists of 887,059 in 1958, 826,956 in 1959, and 966,673 in 1961, compared with a total annual quota of approximately 150,000. *Id.*

[18] Then, as now, the statute directed that immigrant visas should be issued strictly in the chronological order in which immigrants were registered on the quota waiting lists. Sec. 203(c), Immigration and Nationality Act, 66 Stat. 179. For similar provision of present statute, see Sec. 203(a)(8), as amended, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(8).

[19] See Visa Office Bulletins 31 (July 1, 1958) and 46 (Oct. 1, 1959), U.S. Department of State.

66 Stat. 178; Section 201(a) and (b), as amended, 8 U.S.C. (1964 ed., Supp. 1) 1151(a) and (b). And the married child of an alien lawfully admitted for permanent residence has never been accorded any preference or exemption under the quota, Section 203(a)(2), Immigration and Nationality Act, 66 Stat. 178; Section 203(a)(3), as amended, 8 U.S.C. 1153(a)(3). Thus, respondent, entitled to no exemption on account of his minor child here and to no priority because of his parents, would, under the ruling below, automatically acquire exempt status merely because he has engaged in deception. So, also, he would fare better than the lawfully admitted temporary visitor who had committed no fraud and actually was entitled to quota preference or exemption, but could achieve permanent status only as a matter of discretion. See § 245, 8 U.S.C. 1255. That cannot have been the intended effect of Section 241(f). As the Court of Appeals for the Second Circuit concluded in the companion *Scott* case (350 F. 2d at 283), such a construction would "invite frustration and wholesale evasion of the quota system."

Any suggestion that Congress wished to reward quota evaders is negated in the very 1961 legislation which codified Section 241(f) in its present form. Section 10 of the Act of September 26, 1961 (P. L. 87-301, 75 Stat. 654) amended Section 205(c) of the Immigration and Nationality Act, now recodified as Section 204(c), 8 U.S.C. (1964 ed., Supp. 1) 1154(c), which precludes the award of exempt or preferred status to an alien who had previously been accorded similar preference on the basis of a marriage con-

tracted for the purpose of evading the immigration laws. This amendment was proposed by the House Judiciary Committee with the explanation that the new provision was intended "to counteract the increasing number of fraudulent acquisitions of nonquota status through sham marriages between aliens and U.S. citizens". H. Rep. 1086, 87th Cong., 1st Sess., p. 36. In the House debate, the bill's sponsor, Representative Walter, stated that it was "designed to correct * * * abuses * * * by unscrupulous aliens who desire to obtain preferential status by restoring to fraudulent marriages". 107 Cong. Rec. 18284. It can hardly be urged that in another section of the 1961 Act Congress intended to reward the unscrupulous alien who had engaged in the same evasions.

5. The court of appeals thought that unless its interpretation of the statute were adopted Section 241 (f) would have no meaningful impact. This assumption is unfounded. We have already shown that the provision had limited objectives, pointing to the House Committee's observation that the legislation would benefit "mostly Mexican nationals" who had entered on the basis of misrepresentations and had established family ties here. We might stop there. But it may be helpful to outline some additional situations in which Section 241(f) would become operative, under our interpretation, for aliens who have the designated relatives in the United States.

a. To take the example mentioned by the House Committee, a Mexican national enters the United

States through misrepresenting his past activities, his family relationships, or his financial situation. As a native of a Western Hemisphere country he is not subject to quota restrictions. See Sec. 101(a)(27) (8 U.S.C. 1101(a)(27)). The deportability resulting from his misrepresentation may be waived, if there was no other ground of inadmissibility.

b. A lawful permanent resident of the United States returns from an absence in a nearby country and lies about the length, purpose and incidents of his stay, or about his citizenship status. As a returning resident he is not subject to the quota restrictions. See § 101(a)(27) (8 U.S.C. 1101(a)(27)). Because he is a returning resident, inadmissibility for lack of documents can be waived. § 211(b) (8 U.S.C. 1181 (b)). Upon the grant of such a waiver he becomes "otherwise admissible", and his deportability for misrepresentation is also waived. The Section 241(f) waiver was recognized under such circumstances in *Matter of Y—*, 8 I. & N. Dec. 143 (1959).

c. An alien resides in the United States for seven years and then conceals a debarring condition or misconduct upon return from a temporary absence abroad. The disqualification can be waived because of his prior residence in the United States. § 212(c) (8 U.S.C. 1182(c)). Upon the grant of such waiver he becomes "otherwise admissible" and his deportability for misrepresentations is excused. If he were not eligible for the Section 212(c) waiver, the infraction would have disqualified him from benefits under Section 241(f).

d. An entrant who has complied with applicable quota requirements lies about a past criminal record or prostitution. Inadmissibility for the past criminal record or prostitution can be waived under Section 212(h), 8 U.S.C. 1182(h). Upon the grant of such waiver, he becomes otherwise admissible and his deportability for misrepresentations is excused by Section 241(f).

e. An alien lies about matters which bear on his admissibility but do not make him inadmissible. *E.g.*, lies about Communist Party membership found to have been involuntary, or about a crime found not to involve moral turpitude.[20] Since he was otherwise admissible his deportability for misrepresentations is waived by Section 241(f).

To be sure, these examples do not include situations where the misrepresentation evaded quota restrictions. But this is precisely what was intended. Congress enacted Section 241(f) for a limited objective. The familiar rule that doubts concerning the interpretation of deportation laws must be resolved in favor of the alien (see R. 25, n. 3) did not authorize the court below to expand the language and purpose of the statute beyond the limits clearly fixed, and to grant to aliens, on the basis of their fraud, benefits to which they would not have been entitled had they

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[20] The examples described in paragraph *e* are those suggested by the court in *Scott* and by the Board in *Matter of Slade*, 10 I. & N. Dec. 128, 133. Their relevance was disputed by the court below. R. 23-24, n. 1.

acted honestly. The rule of strict construction "cannot provide a substitute for common sense, precedent, and legislative history." *United States* v. *Standard Oil Co.*, 384 U.S. 224, 225. The deportation order against respondent thus was properly entered.[21]

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[21] We note, however, the possibility that respondent may have become eligible to apply for discretionary benefits which, if granted, would avert deportation. Having been inspected and admitted at the time of his entry he would be eligible to apply for adjustment of status under Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255. The change in quota priorities effected by the 1965 amendments would enable him to qualify for fifth preference status as the brother of an American citizen, since it appears that at least one of his sisters has been naturalized. If his parents have also been naturalized he would be eligible for fourth preference status. See Section 203(a)(4) and (5), Immigration and Nationality Act, as amended, 8 U.S.C. (1964 ed., Supp. 1) 1153(a)(4) and (5). While Section 245 requires that a visa must be available, changes in the quota picture resulting from the 1965 amendments make it possible that a visa would become available in the near future to a person in most of the preference classes, although the fifth preference for Italy still entails a long wait. Since respondent will have completed seven years residence in the United States on October 17, 1966, he will then become eligible also to be considered for suspension of deportation under Section 244 of the Immigration and Nationality Act, as amended, 8 U.S.C. (1964 ed., Supp. 1) 1254. However, the achievement of the bare minimum of required residence through delays caused by litigation has been regarded unfavorably. See H. Rep. 1167, 89th Cong., 1st Sess. Moreover, we cannot say whether any such relief would be granted, since it is both discretionary and requires the submission of an application establishing eligibility and setting forth persuasive reasons for special treatment.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. Section 7, Act of September 11, 1957, P. L. 85-316, 71 Stat. 639, 640.

The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation, or (2) aliens who were not of the nationality specified in their visas, shall not apply to an alien otherwise admissible at the time of entry who (A) is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence; or (B) was admitted to the United States between December 22, 1945, and November 1, 1954, both dates inclusive, and misrepresented his nationality, place of birth, identity, or residence in applying for a visa: *Provided*, That such alien described in clause (B) shall establish to the satisfaction of the Attorney General that the misrepresentation was predicated upon the alien's fear of persecution because of race, religion, or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere. After the effective date of this Act, any alien who is the spouse, parent, or child of a United States citizen or of an alien lawfully admitted for permanent residence and who is excludable because (1) he seeks, has sought to pro-

cure, or has procured, a visa or other documentation, or entry into the United States, by fraud or misrepresentation, or (2) he admits the commission of perjury in connection therewith, shall hereafter be granted a visa and admitted to the United States for permanent residence, if otherwise admissible, if the Attorney General in his discretion has consented to the alien's applying or reapplying for a visa and for admission to the United States.

2. Section 211, Immigration and Nationality Act, Act of June 27, 1952, P. L. 414, 66 Stat. 163.

(a) No immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such immigrant visa of the accompanying parent, (2) is properly chargeable to the quota specified in the immigrant visa, (3) is a nonquota immigrant if specified as such in the immigrant visa, (4) is of the proper status under the quota specified in the immigrant visa, and (5) is otherwise admissible under this Act.

(b) Notwithstanding the provisions of section 212(a)(20) of this Act, in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit of other documentation.

(c) The Attorney General may in his discretion, subject to subsection (d), admit to the

United States any otherwise admissible immigrant not admissible under clause (2), (3), or (4) of subsection (a), if satisfied that such inadmissibility was not known to and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory, or, in the case of an immigrant coming from foreign contiguous territory, prior to the application of the immigrant for admission.

(d) No quota immigrant within clause (2) or (3) of subsection (a) shall be admitted under subsection (c) if the entire number of immigrant visas which may be issued to quota immigrants under the same quota for the fiscal year, or the next fiscal year, has already been issued. If such entire number of immigrant visas has not been issued, the Secretary of State, upon notification by the Attorney General of the admission under subsection (c) of a quota immigrant within clause (2) or (3) of subsection (a), shall reduce by one the number of immigrant visas which may be issued to quota immigrants under the same quota during the fiscal year in which such immigrant is admitted, or, if the entire number of immigrant visas which may be issued to quota immigrants under the same quota for the fiscal year has been issued, then during the next following fiscal year.

(e) Every alien making application for admission as an immigrant shall present a valid unexpired passport, or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General.

3. Section 211, Immigration and Nationality Act, 8 U.S.C. 1151, as amended by Section 9, Act of October 3, 1965, P. L. 89-236, 79 Stat. 911.

(a) Except as provided in subsection (b) no immigrant shall be admitted into the United States unless at the time of application for admission he (1) has a valid unexpired immigrant visa or was born subsequent to the issuance of such visa of the accompanying parent, and (2) presents a valid unexpired passport or other suitable travel document, or document of identity and nationality, if such document is required under the regulations issued by the Attorney General. With respect to immigrants to be admitted under quotas of quota areas prior to June 30, 1968, no immigrant visa shall be deemed valid unless the immigrant is properly chargeable to the quota area under the quota of which the visa is issued.

(b) Notwithstanding the provisions of section 212(a)(20) of this Act in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, returning resident immigrants, defined in section 101(a)(27)(B), who are otherwise admissible may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation.

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